

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

TODD FRANCE,)
)
Plaintiff,)
)
v.) Civil Action No. _____
) (McMinn County Circuit Court
MCABEE CONSTRUCTION, INC.,) Case No. 2014-cv-228)
)
Defendant.)

NOTICE OF REMOVAL

Defendant McAbee Construction, Inc. (“Defendant” or “McAbee”) pursuant to 28 U.S.C. §§ 1441 and 1446, hereby gives notice that it is removing this civil action from the Circuit Court for McMinn County, Tennessee to the United States District Court for the Eastern District of Tennessee at Chattanooga, and in support thereof would show.

1. On June 26, 2014, Plaintiff Todd France, who is a citizen and resident of Bradley County, Tennessee, commenced this civil action against McAbee in the Circuit Court for McMinn County, Tennessee, which is located in the Eastern District of Tennessee. Attached hereto as **Exhibit A** is a copy of the summons and complaint in the state court action which were served on McAbee’s registered agent on July 21, 2014. This is the first notice McAbee had of the commencement of this action. This is the only process or claim filed in the state court action.

2. The complaint alleges violations of plaintiff’s rights under the Tennessee Public Protection Act (“TPPA”), Tenn. Code Ann. § 50-1-304, for “his refusal to participate in or refusal to remain silent about illegal activities” and state common law “for retaliatory discharge [for Plaintiff’s reporting of illegal or unethical conduct].” (Compl. ¶¶ 8 and 9). For these

alleged violations, Plaintiff seeks damages for “loss of income and benefits, loss of employment opportunity, . . . humiliation and embarrassment . . . [and] attorneys’ fees pursuant to Tenn. Code Ann. § 50-1-304.” (Compl., ¶¶ 10 and 11). The amount in controversy exceeds \$75,000 exclusive of interest and costs. (Fryer Decl. ¶6 and Bowman Decl. ¶¶ 3-4) (estimating back pay damages through trial of \$124,683.20, based on monthly compensation and benefits of \$3,849.50 × 29.2 months, plus ESOP contributions of \$12,277.80).

3. McAbee is a corporation incorporated under the laws of Alabama; its principal place of business is located at 5724 21st Street, Tuscaloosa, Alabama 35402. (Fryer Decl. ¶2.)

4. This court has original jurisdiction of this action under 28 U.S.C. § 1332 because the parties are of diverse citizenship and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

5. This Notice of Removal is being filed within 30 days of July 21, 2014, the date on which the summons and complaint were served on McAbee and within 30 days after it first received a copy of the initial pleading setting forth the claims for relief.

6. McAbee will promptly give notice of the filing of this Notice of Removal to the Clerk of the McMinn County Circuit Court and to Plaintiff. The giving of such Notice will effect this removal of the state court action pursuant to 28 U.S.C. § 1446(b). A copy of the state court notice is attached as **Exhibit B**.

7. By removing this action to this court, McAbee does not waive any defenses available to it and expressly reserves the right to assert all such defenses in its responsive pleading.

WHEREFORE, McAbee requests that further proceedings of the McMinn County Circuit Court be discontinued and that this action be removed in its entirety to the United States District Court for the Eastern District of Tennessee at Chattanooga.

Respectfully submitted,



Robert L. Bowman (BPR No. 017266)
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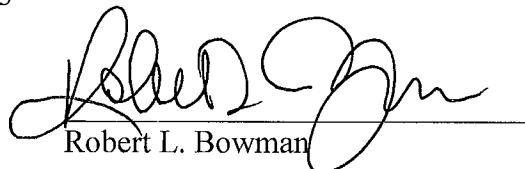
*Attorney for Defendant
McAbee Construction, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Removal has been served via the Court's CM/ECF electronic filing system, hand delivery or First Class U.S. Mail, postage prepaid, on this 19th day of August, 2014, to:

Bill W. Pemerton, Esq. (via CM/ECF and First Class U.S. Mail)
Attorney for Plaintiff
735 Broad Street, Suite 306
Chattanooga, TN 37402
bpemerton@whorton-law.com
(423.826.2643)

Rhonda Cooley, Clerk (via Hand Delivery)
McMinn Circuit Court
McMinn County Courthouse
6 E. Madison Avenue
Athens, TN 37303



Robert L. Bowman